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EVALUATION OF THE RESULTS ACHIEVED IN THE PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, WITH EMPHASIS ON THE IMPLEMENTATION OF THE RELEVANT HUMAN RIGHTS STANDARDS AND INSTRUMENTS AND ON THE EFFECTIVENESS OF INTERNATIONAL AND REGIONAL METHODS AND PROCEDURES

Implementation of Human Rights within the United Nations, a report by Mr. Félix Ermacora to the First International Colloquium on Human Rights, La Laguna (Tenerife), 1-4 November 1992

1. The First International Colloquium on Human Rights in La Laguna the main theme of which was the reform of international institutions for the protection of human rights was held in La Laguna (Tenerife) from 1 to 4 November 1992. The Colloquium was organized, in cooperation with the Spanish National Commission for UNESCO, by the University of La Laguna on the occasion of the celebration of the bicentenary of its foundation, under the auspices of UNESCO and in the presence of its General Director Mr. Federico Mayor Zaragoza.

2. In the attached report, Mr. Ermacora focused on the following problems: what can the United Nations do to further promote human rights in the framework of the United Nations and what can regional organizations do to promote human rights. Since this paper makes a number of concrete suggestions for improving human rights protection by the United Nations, the Secretariat considered it appropriate to submit it under the item regarding the effectiveness of international procedures.

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IMPLEMENTATION OF HUMAN RIGHTS

WITHIN THE UNITED NATIONS

Félix Ermacora

This Colloquium is held at a particularly appropriate time given the forthcoming World Conference on Human Rights 1993, which will take place in Vienna next June.

1. The World Conference can not be considered without first recalling the first World Conference which took place in Tehran in 1968 during a moving series of political events. The Prague Spring had shocked the Soviet Commonwealth of nations, the war in the Middle East had just concluded its first round and just at the time the Tehran conference commenced, in Paris the youth of Europe demonstrated its political will to change the continent. The first World Conference concluded its deliberations with the adoption of a **Final Act of the International Conference on Human Rights** (see the text in UN Doc Sales Nr E. 68 XIV.2). More than 20 resolutions have been attached to this text expressing the particular wishes of member states.

The principal aims of this Conference were set out in G.A. Resolution 2081 (XX) of December 20, 1965: to give a survey of the progress made since the adoption of the Universal Declaration of Human Rights of

December 10, 1948, the evaluation of the effectiveness of methods which have been applied within the framework of the United Nations in particular with regard to the elimination of all forms of racial discrimination and the practice of Appartheid and the programme for further measures to be taken.

One of the most important documents prepared by the Secretary of the United Nations at the outcome of the Conference was the Paper "Measures taken ... "(Doc. 32/5 & Add. 1) and "Methods used..." (A/CONF 32/6 Add. 1). These documents have been brought together in a single paper "United Nations Action in the Field of Human Rights, New York 1980, Sales Nr. E.79. XIV. 6.

2. Furthermore, the forthcoming conference will address similar topics to those discussed at the World Conference in Tehran (see GA Res 45/155 of December 18, 1990).

3. The paper which I am presenting to this Colloquium focuses on the problems which will be considered during the World Conference: what can the United Nations do to further promote human rights in the framework of the United Nations and what can regional organisations do to promote human rights.

I am not a politician or even a statesman who can really encourage communities to move towards a human rights goal. To a certain extend, I am an expert within the United Nations. Therefore my conference can not have any political impact. I can only contribute information and in case that I am able to inform you correctly, I can propose some ideas to be implemented.

4. To address the issue we should begin not with the written framework of the Charter of the United Nations, but rather with the effective application of the Charter's provisions concerning human rights. Thus, we may put a similar question to that asked by the American scholar, Professor Corwin, when he referred to: "The Constitution and what it means today". In our case, we may speak of "The Charter and what it means today with regard to human rights."

Let me recall what the Lebanese President Malik of the Human Rights Commission stated when the United Nations had just commenced its work in the field of human rights. I quote from Moses Moskowitz:

> "From the very beginning it became clear that our task was threefold.
>
> First, we must elaborate a general Declaration of Human Rights defining in succinct terms the fundamental rights and freedoms of man which, according to Article 55 of the Charter, the United Nations must promote. This responsible setting forth of the fundamental rights will exert a potent doctrinal and moral and educational influence on the minds and ways of men. It will serve, in the words of the present Declaration, as a common standard of achievement of all peoples. '
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> Second, there was the insistent need of something more legally binding than a mere Declaration. Such a document can only be a convention, an international treaty setting forth in precise legal terms the maximum area of agreement to which governments are willing to be legally bound in this domain. What the convention loses by reason of its more restricted subject matter, it makes up for by the fact that those who sign it are willing to covenant

themselves into the strict observance of its terms. Hence we have called it the 'Covenant on Human Rights.'

Finally, it was obvious we needed adequate machinery for making sure that human rights are observed and for dealing with cases of their infraction. We called this machinery 'Measures of Implementation'.

Thus, Declaration, Covenant, Implementation: these are the three basic themes around which our concern in the Commission has turned and which constitute together the 'International Bill of Human Rights'."

(Moskowitz, Human Rights and World Order, London 1959, S. 51)

5. All this has been accomplished. Many peoples throughout the world have turned to the United Nations their hopes. However, with the growing awareness of human rights it has become very clear that the substance of human rights has many gaps **and also that** many difficulties **have arisen as regards the implementation of these rights.**

I may deal with the most obvious gaps and difficulties in human rights in the following way:

- I consider these gaps and difficulties in the field of standard setting,
- in the field of international protection of human rights, and,
- with the framework of the United Nations machinery as such.

6. All these problems are conditioned by the very nature of the United Nations as a community of sovereign states partly, as the Charter still refers in Article 2 Para. 7 to non-interference in domestic affairs and partly because the member states are not prepared to assume their financial obligations towards the world community. Moreover, the social and economic situation of the different regions must be taken into consideration, and thus leads us to the idea of a new world order. This has a major bearing on the universality of human rights.

I would like to leave the aforementioned important problems aside for the time being, and comment briefly on problems under art.2 para. 7 of the Charter. Article 2. para 7 has lost its restrictive meaning which has been raised so often when human rights situations have been discussed within the United Nations. Many governments have changed their position with regard to this domestic jurisdiction clause. Thus change came about in particular after the break-up of the communist regimes in Europe. The Conference of experts on minority protection in Geneva 1991 and the CSCE Moscow Declaration of October 1991 have at least weakened the importance of art. para 7. States are now split into two camps. The majority of States on the one side (the former communist States in Europe now belong to this group) and a minority of States on the other side. China is the leading state as regards a broad interpretation of art. 2 par 7. China thinks that art. 2 par 7. may be applicable only in cases of genocide or cases of gross and systematic violations of human rights art. 2 par 7. may not be applied. I hope there will come a day when the restrictive interpretation of art. 2 par will become a general rule of public international law.

7. In the field of standard- setting the United Nations have codified mainly all human rights corresponding to human needs. The Universal Declaration and the Covenants on human rights (1948 and 1966) are the

cornerstones of the Bill of Rights System. However, there are certain gaps in this system which remain to be filled.

a) In particular during the last year when racial and national conflicts have arisen in several regions of the world many people with political responsibilities have argued in favor of a codified system of protection for minorities. I do not think that this problem is an expression of Eurocentrism, because a minimum of protection of minority groups may guarantee security and peace in any other region. As is well known, the United Nations and also the European organisations have failed to codify a minority protection system. Steps which are to be taken in this direction are to be commended. There is the United Nations Draft Declaration of rights of persons belonging to ethnic, religious and linguistic minorities which will - hopefully - be adopted during the present general Assembly. There is also the European Charter on minority and regional languages which will be submitted for signature by Member States of the Council of Europe on the 5th November, 1992.

But both texts are merely a beginning. In the United Nations they will be followed by instruments concerning indigenous populations, while in the Council of Europe it is hoped that an additional protocol to the European Convention on Human Rights will establish a more effective machinery for the protection of minority rights.

What is needed is a more binding instrument. Although experience in the field shows just how difficult this can be.

b) Another problem of standard setting concerns the development of an international criminal jurisdiction as regards gross and systematic violations of human rights. Attempts to this end were made as far back as 1864, in the Treaties of Versailles, of Sèvres, etc.

The International Law Association considered in 1935 a draft submitted by the Italian Professor Pella ("Code repressif mondial"). Everyone is familiar with the events following the Second World War, the London Statute of 1945 and the Nurnberg trials, which are sometimes viewed as being one sided.

Since then, the establishment of a penal chamber in the ICT has been discussed on the basis of GA res 260 B (III). The possibilities of a criminal jurisdiction has also been raised in the context of Apartheid. The famous René Cassin supported the idea of an international criminal court.

Today new attempts have been made in the light of the atrocities committed in the new Balkan war in Croatia, Serbia and Bosnia-Herzegowina. In a report drawn up in July 1992, a special working group of the International Law Commission reiterated the belief of the Commission that an international criminal court is an achievable goal and suggested a structure for such an institution. The ILC working group clearly asks the GA for a renewed mandate to undertake a detailed project in the form of a Draft Statute of such a Court. The Parliament for Global Action suggested an International Criminal Court.

Within the Council of Europe, also attempts in this direction deserve mention.

c) In the framework of standard-setting the one has to address the problems of how to reconcile the discrepancies which exist between the concepts of human rights in different regions of the world. The most important differences are to be found in the human rights concepts of Islamic countries.

8. With regard to human rights machineries, it is worth mentioning the large number of mechanisms which exist. On the conventional level there are at least 5 instruments and on the non-conventional level there are many more . In addition to procedures under ECOSOC Res 1234 (XLII) and 1503 (XLVIII) there are - as we all know - subject and country-oriented procedures by way of fack-finding undertaken by individual rapporteurs or groups of experts.

The main difficulty is created by the pluralism of the systems. Many organs apply similar rules in a different manner. The same rule is interpreted differently. This creates a lack of confidence for all those who place their trust in human rights. Although it is up to the General Assembly to coordinate the diversity of the approaches of the different organs, this coordination is non-existent. Therefore we are confronted with different general comments and interpretations of the rules. The only way out of this dilemma would be a "tabula rasa" and the concentration of all United Nations - machineries in one centralized organ - which is not feasable - or the creation of a supreme body whose task would be to coordinate the interpretation of provisions governing similar human rights provisions .

In the Council of Europe - an organization of 27 states - there are similar problems

This discussion has not yet reached its conclusion. With regard to the former communist states, the creation of an additional system of protection to the conventional organs has been proposed.

9. The effectivness of the human rights system within the United Nations depends on two factors. Firstly, the situation in the member states themselves:

- ethnic, social, religious and political conflicts without means and ways of peaceful solution,

- the poverty which exists in certain regions of the world and the inability to organize anything effective against this evil.

- environmental problems of environment which endanger the living conditions of less-developed nations.

- the drug abuse

- the use of ideologies based on intolerance and racial hatred.

10. Second factor concerns in the organization of the United Nations. I have the impression that the world organization has no "think-tank" to overcome difficulties. Reforms on the organisational level. In combatting gross and systematic human rights violations more efficient procedures must be created. The special procedures must be reformed. The procedures under 1503, which no longer have the effect they might have had in the 70s, should be abolished and in all cases public procedures should be set up. The 1503 procedure no longer has a

deterring effect. It has become a slow-working bureaucratic machinery. On the other hand, publicity is necessary to impress States.

The experience in the Council of Europe shows that progress can be achieved only with a well-trained secretariat, devoted to human rights. The United Nations- Center, its present financial and personal situation is unable to perform the tasks which the member States entrust to the Secretariat. The number of Members of the Secretariat which deals

with special procedures has been cut from 27 to 6, while the training of international civil servants is far from satisfactory.

The procedures within the United Nations Secretariat and the institutions dealing with human rights problems - such as the CN, the ECOSOC, the GA and the Security Council are not coordinated. Many bodies do the same thing without consulting each other. In my opinion the Commission on Human Rights must become a central and principal organ in the field of human rights and should no longer be dependent on the ECOSOC.

A particular problem is the fact-finding machinery. A careful study of special procedures and mechanisms has shown that gaps still exist in the system of human rights protection. The possibility to react appropriately and immediately to acute situations arising from gross and systematic violations of human rights wherever and whenever they occur, is urgently required in order to fill those gaps without duplicating and overburdening existing mechanisms. The international community urgently needs to find ways and means to take action in response to acute situations arising from gross and systematic violations of human rights much faster and more effectively than in the past. The United Nations behaviour in the case of the situation in Bosnia-Herzegowina is a very good example for the shortcomings in the human rights field. An emergency machinery has been proposed. I hope that this machinery will be adopted by the GA, but that the fact finding methods will also be scrutinized.

11. I have tried in this paper to highlight some urgent needs as regards the improvement of human rights implementation within the United Nations system.

I hope that at least one or some of the ideas proposed here will fall on fertile ground and that this Colloquium may contribute to progress in the international field of human rights.

The theories are good but there is a long way to go before they are put into practice, even though they are acknowledged as being valid. Many difficulties must be overcome and a great deal of education is required in this field.